AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4157 OFFERED BY MR. DEAL

(including an amendment to the title)

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Better Health Information System Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PRESERVING PRIVACY AND SECURITY LAWS.

Nothing in this Act (or the amendments made by this Act) shall be construed to affect the scope, substance, or applicability of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and any regulation issued pursuant to such section.

TITLE I—COORDINATION FOR, PLANNING FOR, AND INTEROPERABILITY OF HEALTH INFORMATION TECHNOLOGY

SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Title II of the Public Health Service Act is amended by adding at the end the following new part:

''PART D—HEALTH INFORMATION TECHNOLOGY

''OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

''SEC. 271. (a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology that shall be headed by the National

Coordinator for Health Information Technology (referred to in this part as the 'National Coordinator'). The National Coordinator shall be appointed by and report directly to the Secretary. The National Coordinator shall be paid at a rate equal to the rate of basic pay for level IV of the Executive Schedule.

''(b) GOALS OF NATIONWIDE INTEROPERABLE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide interoperable health information technology infrastructure that—

''(1) improves health care quality, promotes data accuracy, reduces medical errors, increases the efficiency of care, and advances the delivery of appropriate, evidence-based health care services;

''(2) promotes wellness, disease prevention, and management of chronic illnesses by increasing the availability and transparency of information related to the health care needs of an individual for such individual;

''(3) promotes the availability of appropriate and accurate information necessary to make medical decisions in a usable form at the time and in the location that the medical service involved is provided;

''(4) produces greater value for health care expenditures by reducing health care costs that result from inefficiency, medical errors, inappropriate care, and incomplete or inaccurate information;

''(5) promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, enhanced quality, and improved outcomes in health care services;

''(6) with respect to health information of consumers, advances the portability of such information and the ability of such consumers to share and use such information to assist in the management of their health care;

''(7) improves the coordination of information and the provision of such services through an effective infrastructure for the secure and authorized exchange and use of health care information;

''(8) is consistent with legally applicable requirements with respect to securing and protecting the confidentiality of individually identifiable health information of a patient;

''(9) promotes the creation and maintenance of transportable, secure, Internet-based personal health records, including promoting the efforts of health care payers and health plan administrators for a

health plan, such as Federal agencies, private health plans, and third party administrators, to provide for such records on behalf of members of such a plan;

''(10) promotes access to and review of the electronic health record of a patient by such patient;

''(11) promotes health research and health care quality research and assessment; and

''(12) promotes the efficient and streamlined development, submission, and maintenance of electronic health care clinical trial data.

''(c) DUTIES OF THE NATIONAL COORDINATOR.—

''(1) STRATEGIC PLANNER FOR INTEROPERABLE HEALTH INFORMATION TECHNOLOGY.—The National Coordinator shall provide for a strategic plan for the nationwide implementation of interoperable health information technology in both the public and private health care sectors consistent with subsection (b).

''(2) PRINCIPAL ADVISOR TO THE SECRETARY.—The National Coordinator shall serve as the principal advisor to the Secretary on the development, application, and use of health information technology, and shall coordinate the policies and programs of the Department of Health and Human

Services for promoting the use of health information technology.

''(3) INTRAGOVERNMENTAL COORDINATOR.—The National Coordinator shall ensure that health information technology policies and programs of the Department of Health and Human Services are coordinated with those of relevant executive branch agencies and departments with a goal to avoid duplication of effort, to align the health information architecture of each agency or department toward a common approach, and to ensure that each agency or department conducts programs within the areas of its greatest expertise and its mission in order to create a national interoperable health information system capable of meeting national public health needs effectively and efficiently. The coordination authority provided to the National Coordinator under the previous sentence shall supercede any such authority otherwise provided to any other Federal official.

''(4) ADVISOR TO OMB.—The National Coordinator shall provide to the Director of the Office of Management and Budget comments and advice with respect to specific Federal health information technology programs.''.

(b) TREATMENT OF EXECUTIVE ORDER 13335.—Executive Order 13335 shall not have any force or effect after the date of the enactment of this Act.

(c) TRANSITION FROM ONCHIT UNDER EXECUTIVE ORDER.—

(1) IN GENERAL.—All functions, personnel, assets, liabilities, administrative actions, and statutory reporting requirements applicable to the old National Coordinator or the Office of the old National Coordinator on the date before the date of the enactment of this Act shall be transferred, and applied in the same manner and under the same terms and conditions, to the new National Coordinator and the Office of the new National Coordinator as of the date of the enactment of this Act.

(2) RULE OF CONSTRUCTION.— Nothing in this section or the amendment made by this section shall be construed as requiring the duplication of Federal efforts with respect to the establishment of the Office of the National Coordinator for Health Information Technology, regardless of whether such efforts are carried out before or after the date of the enactment of this Act.

(3) ACTING NATIONAL COORDINATOR.—Before the appointment of the new National Coordinator,

the old National Coordinator shall act as the National Coordinator for Health Information Technology until the office is filled as provided in section 271(a) of the Public Health Service Act, as added by subsection (a). The Secretary of Health and Human Services may appoint the old National Coordinator as the new National Coordinator.

(4) DEFINITIONS.—For purposes of this subsection:

(A) NEW NATIONAL COORDINATOR.—The term ''new National Coordinator'' means the National Coordinator for Health Information Technology appointed under section 271(a) of the Public Health Service Act, as added by subsection (a).

(B) OLD NATIONAL COORDINATOR.—The term ''old National Coordinator'' means the National Coordinator for Health Information Technology appointed under Executive Order 13335.

SEC. 102. REPORT ON THE AMERICAN HEALTH INFORMATION COMMUNITY.

Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the work

conducted by the American Health Information Community (in this section referred to as ''AHIC''), as established by the Secretary. Such report shall include the following:

(1) A description of the accomplishments of AHIC, with respect to the promotion of the development of national guidelines, the development of a nationwide health information network, and the increased adoption of health information technology.

(2) Information on how model privacy and security policies may be used to protect confidentiality of health information, and an assessment of how existing policies compare to such model policies.

(3) Information on the progress in—

(A) establishing uniform industry-wide health information technology standards;

(B) achieving an internet-based nationwide health information network; and

(C) achieving interoperable electronic health record adoption across health care providers.

(4) Recommendations for the transition of AHIC to a longer-term advisory and facilitation entity, including—

(A) a schedule for such transition;

(B) options for structuring the entity as either a public-private or private sector entity;

(C) the role of the Federal Government in the entity;

(D) steps for—

(i) continued leadership in the facilitation of guidelines or standards;

(ii) the alignment of financial incentives; and

(iii) the long-term plan for health care transformation through information technology; and

(E) the elimination or revision of the functions of AHIC during the development of the nationwide health information network.

SEC. 103. INTEROPERABILITY PLANNING PROCESS; FEDERAL INFORMATION COLLECTION ACTIVITIES.

Part D of title II of the Public Health Service Act, as added by section 101, is amended by adding at the end the following new section:

''INTEROPERABILITY PLANNING PROCESS; FEDERAL INFORMATION COLLECTION ACTIVITIES

''SEC. 272. (a) STRATEGIC INTEROPERABILITY PLANNING PROCESS.—

"(1) ASSESSMENT AND ENDORSEMENT OF CORE STRATEGIC GUIDELINES.—

"(A) IN GENERAL.—Not later than December 31, 2006, the National Coordinator shall publish a strategic plan, including a schedule, for the assessment and the endorsement of core interoperability guidelines for significant use cases consistent with this subsection. The National Coordinator may update such plan from time to time.

"(B) CONSULTATION WITH OTHER PARTIES.—The National Coordinator shall develop and implement such strategic plan in consultation with the American Health Information Community and other appropriate entities.

"(C) DEFINITIONS.—For purposes of this section:

"(i) INTEROPERABILITY GUIDELINE.—The term 'interoperability guideline' means a guideline to improve and promote the interoperability of health information technology for purposes of electronically accessing and exchanging health information. Such term includes named standards, architectures, software schemes

for identification, authentication, and security, and other information needed to ensure the reproducible development of common solutions across disparate entities.

''(ii) CORE INTEROPERABILITY GUIDELINE.—The term 'core interoperability guideline' means an interoperability guideline that the National Coordinator determines is essential and necessary for purposes described in clause (i).

''(iii) SIGNIFICANT USE CASE.—The term 'significant use case' means a category (as specified by the National Coordinator) that identifies a significant use or purpose for the interoperability of health information technology, such as for the exchange of laboratory information, drug prescribing, clinical research, and electronic health records.

''(2) NATIONAL SURVEY.—

''(A) IN GENERAL.—Not later than August 31, 2008, the National Coordinator shall conduct one or more surveys designed to measure the capability of entities (including Federal agencies, State and local government agencies,

and private sector entities) to exchange electronic health information by appropriate significant use case. Such surveys shall identify the extent to which the type of health information, the use for such information, or any other appropriate characterization of such information may relate to the capability of such entities to exchange health information in a manner that is consistent with methods to improve the interoperability of health information and with core interoperability guidelines.

''(B) DISSEMINATION OF SURVEY RESULTS.—The National Coordinator shall disseminate the results of such surveys in a manner so as to—

''(i) inform the public on the capabilities of entities to exchange electronic health information;

''(ii) assist in establishing a more interoperable information architecture; and

''(iii) identify the status of health information systems used in Federal agencies and the status of such systems with respect to interoperability guidelines.

''(3) ENDORSEMENT OF CORE INTEROPERABILITY GUIDELINES FOR SIGNIFICANT USE CASES.—As part of the strategic plan under paragraph (1) and not later than August 31, 2009, the National Coordinator shall endorse core interoperability guidelines for significant use cases. Compliance with such guidelines shall be voluntary, subject to subsection (b)(1).

''(b) FEDERAL HEALTH INFORMATION COLLECTION ACTIVITIES.—

''(1) REQUIREMENTS.—With respect to a core interoperability guideline endorsed under subsection (a)(3) for a significant use case, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such guideline within three years after the date of such endorsement.

''(2) PROMOTING USE OF NON-IDENTIFIABLE HEALTH INFORMATION TO IMPROVE HEALTH RESEARCH AND HEALTH CARE QUALITY.—Where feasible, and consistent with applicable privacy or security or other laws, the President, in consultation with the Secretary, shall take measures to allow access to useful categories of non-identifiable health information in records maintained by the Federal

government, or maintained by entities under contract with the Federal government, to advance health care quality and health research where such information is in a form that can be used in such research. The President shall consult with appropriate Federal agencies, and solicit public comment, on appropriate categories of information, and appropriate measures to take. The President may consider costs, administrative burden, and the potential for improvements in health care quality in determining such appropriate measures.

''(3) ANNUAL REVIEW AND REPORT.—For each year during the five-year period following the date of the enactment of this section, the National Coordinator shall review the operation of health information collection by and submission to the Federal government and the purchases (and planned purchases) of health information technology by the Federal government. For each such year and based on the review for such year, the National Coordinator shall submit to the President and Congress recommendations on methods to—

''(A) streamline (and eliminate redundancy in) Federal systems used for the collection and submission of health information;

''(B) improve efficiency in such collection and submission;

''(C) increase the ability to assess health care quality; and

''(D) reduce health care costs.''.

SEC. 104. ENSURING HEALTH CARE PROVIDERS MAY MAINTAIN HEALTH INFORMATION IN ELECTRONIC FORM.

Part D of title II of the Public Health Service Act, as added by section 101(a) and amended by section 103, is amended by adding at the end the following new section:

''ENSURING HEALTH CARE PROVIDERS MAY MAINTAIN HEALTH INFORMATION IN ELECTRONIC FORM

''SEC. 273. (a) IN GENERAL.—Any health care provider that participates in a health care program that receives Federal funds shall be deemed as meeting any requirement for the maintenance of data in paper form under such program (whether or not for purposes of management, billing, reporting, reimbursement, or otherwise) if the required data is maintained in an electronic form.

''(b) RELATION TO STATE LAWS.—Beginning on the date that is one year after the date of the enactment of this section, subsection (a) shall supersede any contrary provision of State law.

''(c) CONSTRUCTION.—Nothing in this section shall be construed as—

''(1) requiring health care providers to maintain or submit data in electronic form;

''(2) preventing a State from permitting health care providers to maintain or submit data in paper form; or

''(3) preventing a State from requiring health care providers to maintain or submit data in electronic form.''.

SEC. 105. STUDY AND REPORT ON STATE, REGIONAL, AND COMMUNITY HEALTH INFORMATION EXCHANGES.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study on issues related to the development, operation, and implementation of State, regional, and community health information exchanges. Such study shall include the following, with respect to such health information exchanges:

(1) Profiles detailing the current stages of such health information exchanges with respect to the progression of the development, operation, implementation, organization, and governance of such exchanges.

(2) The impact of such exchanges on healthcare quality, safety, and efficiency, including—

(A) any impact on the coordination of health information and services across healthcare providers and other organizations relevant to health care;

(B) any impact on the availability of health information at the point-of-care to make timely medical decisions;

(C) any benefits with respect to the promotion of wellness, disease prevention, and chronic disease management;

(D) any improvement with respect to public health preparedness and response;

(E) any impact on the widespread adoption of interoperable health information technology, including electronic health records;

(F) any contributions to achieving an Internet-based national health information network; and

(G) any contribution of health information exchanges to consumer access and to consumers' use of their health information.

(3) Best practice models for financing, incentivizing, and sustaining such health information exchanges.

(4) Information identifying the common principles, policies, tools, and standards used (or proposed) in the public and private sectors to support the development, operation, and implementation of such health information exchanges.

(5) A description of any areas in which Federal government leadership is needed to support growth and sustainability of such health information exchanges.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study described in subsection (a), including such recommendations as the Secretary determines appropriate to facilitate the development, operation, and implementation of health information exchanges.

TITLE II—EXPEDITED MODIFICATION PROCEDURES FOR AND ADOPTION OF TRANSACTIONAL STANDARDS AND CODES

SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF STANDARDS THAT ENABLE ELECTRONIC EXCHANGES.

Section 1174(b) of the Social Security Act (42 U.S.C. 1320d-3(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting ''and in accordance with paragraph (3)'' before the period; and

(B) by adding at the end the following new sentence: ''For purposes of this subsection and section 1173(c)(2), the term 'modification' includes a new version or a version upgrade.''; and

(2) by adding at the end the following new paragraph:

''(3) EXPEDITED PROCEDURES FOR ADOPTION OF ADDITIONS AND MODIFICATIONS TO STANDARDS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the Secretary shall provide for an expedited upgrade program (in this paragraph referred to as the 'upgrade program'), in accordance with this paragraph, to develop and approve additions and modifications to the standards adopted under section 1173(a) to improve the quality of such standards or to extend the functionality of such standards to meet evolving requirements in health care.

"(B) PUBLICATION OF NOTICES.—Under the upgrade program:

"(i) VOLUNTARY NOTICE OF INITIATION OF PROCESS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization is initiating a process to develop an addition or modification to a standard adopted under section 1173(a), the Secretary shall publish a notice in the Federal Register that—

"(I) identifies the subject matter of the addition or modification;

"(II) provides a description of how persons may participate in the development process; and

"(III) invites public participation in such process.

"(ii) VOLUNTARY NOTICE OF PRELIMINARY DRAFT OF ADDITIONS OR MODIFICATIONS TO STANDARDS.—Not later than 30 days after the date of the date the Secretary receives a notice from a standard setting organization that the organization has prepared a preliminary draft of an addition or modification to a standard adopted by section 1173(a), the Secretary shall publish a notice in the Federal Register that—

"(I) identifies the subject matter of (and summarizes) the draft;

"(II) specifies the procedure for obtaining documentation for the draft;

"(III) provides a description of how persons may submit comments in writing and at any public hearing or meeting held by the organization on the draft; and

"(IV) invites submission of such comments and participation in such hearing or meeting.

"(iii) NOTICE OF PROPOSED ADDITION OR MODIFICATION TO STANDARDS.—Not later than 30 days after the date of the date the Secretary receives a notice from a standard setting organization that the organization has a proposed addition or modification to a standard adopted under section 1173(a) that the organization intends to submit under subparagraph (D)(iii), the Secretary shall publish a notice in the Federal Register that contains, with respect to the proposed addition or modification, the information required in the notice under clause (ii) with respect to a preliminary draft of an addition or modification.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring a standard setting organization to request the notices described in clauses (i) and (ii) with respect to an addition or modification to a standard in order to

qualify for an expedited determination under subparagraph (C) with respect to a proposal submitted to the Secretary for adoption of such addition or modification.

''(C) PROVISION OF EXPEDITED DETERMINATION.—Under the upgrade program and with respect to a proposal by a standard setting organization for an addition or modification to a standard adopted under section 1173(a), if the Secretary determines that the standard setting organization developed such addition or modification in accordance with the requirements of subparagraph (D) and the National Committee on Vital and Health Statistics recommends approval of such addition or modification under subparagraph (E), the Secretary shall provide for expedited treatment of such proposal in accordance with subparagraph (F).

''(D) REQUIREMENTS.—The requirements under this subparagraph with respect to a proposed addition or modification to a standard by a standard setting organization are the following:

''(i) REQUEST FOR PUBLICATION OF NOTICE.—The standard setting organiza-

tion submits to the Secretary a request for publication in the Federal Register of a notice described in subparagraph (B)(iii) for the proposed addition or modification.

''(ii) PROCESS FOR RECEIPT AND CONSIDERATION OF PUBLIC COMMENT.—The standard setting organization provides for a process through which, after the publication of the notice referred to under clause (i), the organization—

''(I) receives and responds to public comments submitted on a timely basis on the proposed addition or modification before submitting such proposed addition or modification to the National Committee on Vital and Health Statistics under clause (iii);

''(II) makes publicly available a written explanation for its response in the proposed addition or modification to comments submitted on a timely basis; and

''(III) makes public comments received under clause (I) available, or

provides access to such comments, to the Secretary.

"(iii) SUBMITTAL OF FINAL PROPOSED ADDITION OR MODIFICATION TO NCVHS.—After completion of the process under clause (ii), the standard setting organization submits the proposed addition or modification to the National Committee on Vital and Health Statistics for review and consideration under subparagraph (E). Such submission shall include information on the organization's compliance with the notice and comment requirements (and responses to those comments) under clause (ii).

"(E) HEARING AND RECOMMENDATIONS BY NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS.—Under the upgrade program, upon receipt of a proposal submitted by a standard setting organization under subparagraph (D)(iii) for the adoption of an addition or modification to a standard, the National Committee on Vital and Health Statistics shall provide notice to the public and a reasonable opportunity for public testimony at a hearing on

such addition or modification. The Secretary may participate in such hearing in such capacity (including presiding ex officio) as the Secretary shall determine appropriate. Not later than 90 days after the date of receipt of the proposal, the Committee shall submit to the Secretary its recommendation to adopt (or not adopt) the proposed addition or modification.

''(F) DETERMINATION BY SECRETARY TO ACCEPT OR REJECT NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS RECOMMENDATION.—

''(i) TIMELY DETERMINATION.—Under the upgrade program, if the National Committee on Vital and Health Statistics submits to the Secretary a recommendation under subparagraph (E) to adopt a proposed addition or modification, not later than 90 days after the date of receipt of such recommendation the Secretary shall make a determination to accept or reject the recommendation and shall publish notice of such determination in the Federal Register not later than 30 days after the date of the determination.

"(ii) CONTENTS OF NOTICE.—If the determination is to reject the recommendation, such notice shall include the reasons for the rejection. If the determination is to accept the recommendation, as part of such notice the Secretary shall promulgate the modified standard (including the accepted proposed addition or modification accepted).

"(iii) LIMITATION ON CONSIDERATION.—The Secretary shall not consider a proposal under this subparagraph unless the Secretary determines that the requirements of subparagraph (D) (including publication of notice and opportunity for public comment) have been met with respect to the proposal.

"(G) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to a final rule promulgated under subparagraph (F).".

SEC. 202. UPGRADING ASC X12 AND NCPDP STANDARDS.

The Secretary of Health and Human Services shall provide by notice published in the Federal Register for the

following replacements of standards to apply to transactions occurring on or after April 1, 2009:

(1) ACCREDITED STANDARDS COMMITTEE X12 (ASC X12) STANDARD.—The replacement of the Accredited Standards Committee X12 (ASC X12) version 4010 adopted under section 1173(a) of such Act (42 U.S.C. 1320d-2(a)) with the ASC X12 version 5010, as reviewed by the National Committee on Vital Health Statistics.

(2) NATIONAL COUNCIL FOR PRESCRIPTION DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS STANDARDS.—The replacement of the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standards version 5.1 adopted under section 1173(a) of such Act (42 U.S.C. 1320d-2(a)) with whichever is the latest version of the NCPDP Telecommunications Standards that has been approved by such Council and reviewed by the National Committee on Vital Health Statistics as of April 1, 2008.

TITLE III—PROMOTING THE USE OF HEALTH INFORMATION TECHNOLOGY TO BETTER COORDINATE HEALTH CARE

SEC. 301. SAFE HARBORS TO ANTIKICKBACK CIVIL PENALTIES AND CRIMINAL PENALTIES FOR PROVISION OF HEALTH INFORMATION TECHNOLOGY AND TRAINING SERVICES.

(a) FOR CIVIL PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(1) in subsection (a), by adding at the end the following new sentence: ''Paragraph (5) shall not apply to nonmonetary remuneration (in the form of health information technology or related installation, maintenance, support, or training services) made by a person to an individual described in such paragraph if the provision of such remuneration is without an agreement between the parties or legal condition that limits or restricts the use of the health information technology in conjunction with other health information technology, if the person (or a representative of such person) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that

would permit interoperability, and if the remuneration will assist with the individual's health care.'';

(2) in subsection (b), by adding at the end the following new paragraph:

''(4) For purposes of this subsection, inducements to reduce or limit services described in paragraph (1) shall not include the practical or other advantages resulting from health information technology or related installation, maintenance, support, or training services.''; and

(3) in subsection (i), by adding at the end the following new paragraph:

''(8) The term 'health information technology' means hardware, software, license, right, intellectual property, equipment, or other information technology (including new versions, upgrades, and connectivity) designed primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.''.

(b) FOR CRIMINAL PENALTIES.—Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(1) in subparagraph (G), by striking ''and'' at the end;

(2) in the subparagraph (H) added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

(A) by moving such subparagraph 2 ems to the left; and

(B) by striking the period at the end and inserting a semicolon;

(3) in the subparagraph (H) added by section 431(a) of such Act (117 Stat. 2287)—

(A) by redesignating such subparagraph as subparagraph (I);

(B) by moving such subparagraph 2 ems to the left; and

(C) by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new subparagraph:

''(J) any nonmonetary remuneration (in the form of health information technology, as defined in section 1128A(i)(8), or related installation, maintenance, support or training services) made to a person if—

"(i) the provision of such remuneration is without an agreement between the parties or legal condition that—

"(I) limits or restricts the use of the health information technology to services provided by the physician to individuals receiving services at the entity;

"(II) limits or restricts the use of the health information technology in conjunction with other health information technology; or

"(III) conditions the provision of such remuneration on the referral of patients or business to the entity;

"(ii) such remuneration is arranged for in a written agreement that is signed by the parties involved (or their representatives) and that specifies the remuneration solicited or received (or offered or paid) and states that the provision of such remuneration is made for the primary purpose of better coordination of care or improvement of health quality, efficiency, or research; and

"(iii) the entity providing the remuneration (or a representative of such entity) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that would permit interoperability.".

(c) EFFECTIVE DATE AND EFFECT ON STATE LAWS.—

(1) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date that is 120 days after the date of the enactment of this Act.

(2) PREEMPTION OF STATE LAWS.—No State (as defined in section 1101(a) of the Social Security Act (42 U.S.C. 1301(a)) for purposes of title XI of such Act) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in the last sentence of section 1128A(a), section 1128A(b)(4), or section 1128B(b)(3)(J) of such Act, as added by subsections (a)(1), (a)(2), and (b), respectively, if the conditions described in the respective provision, with respect to such transaction, are met.

SEC. 302. EXCEPTION TO LIMITATION ON CERTAIN PHYSICIAN REFERRALS (UNDER STARK) FOR PROVISION OF HEALTH INFORMATION TECHNOLOGY AND TRAINING SERVICES TO HEALTH CARE PROFESSIONALS.

(a) IN GENERAL.—Section 1877(b) of the Social Security Act (42 U.S.C. 1395nn(b)) is amended by adding at the end the following new paragraph:

''(6) INFORMATION TECHNOLOGY AND TRAINING SERVICES.—

''(A) IN GENERAL.—Any nonmonetary remuneration (in the form of health information technology or related installation, maintenance, support or training services) made by an entity to a physician if—

''(i) the provision of such remuneration is without an agreement between the parties or legal condition that—

''(I) limits or restricts the use of the health information technology to services provided by the physician to individuals receiving services at the entity;

''(II) limits or restricts the use of the health information technology in

conjunction with other health information technology; or

"(III) conditions the provision of such remuneration on the referral of patients or business to the entity;

"(ii) such remuneration is arranged for in a written agreement that is signed by the parties involved (or their representatives) and that specifies the remuneration made and states that the provision of such remuneration is made for the primary purpose of better coordination of care or improvement of health quality, efficiency, or research; and

"(iii) the entity (or a representative of such entity) has not taken any action to disable any basic feature of any hardware or software component of such remuneration that would permit interoperability.

"(B) HEALTH INFORMATION TECHNOLOGY DEFINED.—For purposes of subparagraph (A), the term 'health information technology' means hardware, software, license, right, intellectual property, equipment, or other information technology (including new versions, upgrades, and

connectivity) designed primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.''.

(b) EFFECTIVE DATE AND EFFECT ON STATE LAWS.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 120 days after the date of the enactment of this Act.

(2) PREEMPTION OF STATE LAWS.—No State (as defined in section 1101(a) of the Social Security Act (42 U.S.C. 1301(a)) for purposes of title XI of such Act) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in section 1877(b)(6) of such Act, as added by subsection (a), if the conditions described in such section, with respect to such transaction, are met.

Amend the title so as to read: ''A bill to promote a better health information system.''